Filed 12/11/03 Ringstrom v. State Dept. of Health Services CA5

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

JO ANNE RINGSTROM, as Trustee etc.,

Plaintiff and Respondent,

v.

STATE DEPARTMENT OF HEALTH SERVICES,

Defendant and Appellant;

MERCED COUNTY HUMAN SERVICES AGENCY,

Real Party in Interest and Respondent.

F041860

(Super. Ct. No. 145914)

OPINION

APPEAL from a judgment of the Superior Court of Merced County. Hugh M. Flanagan, Judge.

Bill Lockyer, Attorney General, James M. Humes, Assistant Attorney General, Frank S. Furtek and Barbara L. Sheldon, Deputy Attorneys General, for Defendant and Appellant.

Robert T. Haden for Plaintiff and Respondent.

No appearance for Real Party in Interest and Respondent.

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The State Department of Health Services (Health Services or the Department) appeals from an order directing it to pay the costs and attorney fees incurred by Alvin and Twila Williams (the Williams) in this mandamus action challenging the denial of their applications for Medi-Cal benefits. Health Services opposed the Williams's fee request on the ground the Department had not been notified of, and had not appeared at, the hearing at which the court granted the Williams's writ petition. The court ruled Health Services had received constructive if not actual notice of the writ hearing, and granted the request.

We will conclude the Department's remedy in this situation would have been to move to set aside, for lack of personal jurisdiction, the order granting the writ, rather than to challenge the court's jurisdiction at the hearing on the motion for costs and fees. Since it failed to do that, we will affirm the fee order without reaching the question of whether the Williams properly served Health Services with notice of writ proceeding.

FACTS AND PROCEEDINGS

Alvin and Twila Williams, both of whom are in their 60's and developmentally disabled, are the beneficiaries of a special needs trust established by their father upon his death in 1998. Jo Anne Ringstrom is the trustee.

In 2001, Ringstrom applied on behalf of Alvin and Twila to the Merced County Human Services Agency (MCHSA or the County) for medical benefits available through the state Medi-Cal program. Medi-Cal is administered by Health Services in Sacramento, but eligibility determinations are made locally by each county's welfare department, as they were in this case by MCHSA.

MCHSA denied the applications on the ground the funds in the special needs trust -- $17,138.26 in the case of Alvin and $19,620.70 in the case of Twila -- were available for their use, and exceeded the limit on resources permitted under Medi-Cal. Ringstrom, through Attorney Robert Haden, then requested an administrative hearing to contest this determination.

The hearing was held in Merced on July 18, 2001, on behalf of *Health Services*, before an administrative law judge assigned to the Hearings Division of the Department of *Social Services* (Social Services). Health Services and Social Services are different state agencies.[1] They are housed in separate but adjacent buildings in Sacramento, and have different addresses: Health Services is located at 714 P Street; Social Services is located next door at 744 P Street. This distinction is central to the present controversy.

The hearing was continued briefly to permit Attorney Haden to submit additional materials for the record, as shown in a document entitled "Notification of Open Record and Waiver of Time." The hearing officer's handwritten notation in the document directs Haden to send these materials to him at the following address: "Dept. of Social Services, State Hearings Division - Fresno, 744 P Street, MS 28-04, Sacramento, CA 95814."

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1 Section 10950 of the Welfare and Institutions Code provides in part:

> "If any applicant for or recipient of public social services is dissatisfied with any action of the county department relating to his or her application for or receipt of public social services …, he or she shall, … upon filing a request with the State Department of Social Services or the State Department of Health Services, whichever department administers the public social service, be accorded an opportunity for a state hearing. [¶] …
>
> "For the purposes of administering health care services and medical assistance, the State Director of Health Services shall have those powers and duties conferred on the Director of Social Services by this chapter to conduct state hearings in order to secure approval of a state plan under applicable federal law.
>
> "The State Director of Health Services may contract with the State Department of Social Services for the provisions of state hearings in accordance with this chapter."

As the address indicates, mail sent to 744 P Street goes to *Social Services*. The "MS" in the address stands for "mail station." According to the person who supervises the mail room at 744 P Street, the system works this way:

> "The various offices at Social Services are assigned mail station numbers. Mail comes in addressed to a physical address, post office boxes and mail stations. Social Services encourages people to use mail stations. If a piece of mail contains a mail station number, the mail is routed to that mail station. Mail station '28-04' is the Fresno Regional Office, State Hearing Division for the Department of Social Services. The Department of Health Services, which is physically next door to Social Services, does not use mail station numbers."

Haden mailed the additional materials to the hearing officer in Fresno, by way of Sacramento, on July 26, 2001.

The hearing officer thereafter issued a proposed decision denying the Williams's claim, which decision was adopted by the director of Health Services on October 15th. The decision included a preprinted notice entitled "Appeal Rights," which stated in part:

> "You may ask for a rehearing of this decision by mailing a written request to the Rehearing Unit, 744 P Street, MS 19-37, Sacramento, CA 95814 within 30 days after you receive this decision.…
>
> "You may ask for judicial review of this decision by filing a petition in Superior Court under Code of Civil Procedure § 1094.5 within one year after you receive this decision. You may file this petition without asking for a rehearing.…"[2]

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[2] Section 10962 of the Welfare and Institutions Code provides that an applicant for Medi-Cal may obtain judicial review of the director's decision as follows:

> "The applicant or recipient or the affected county, within one year after receiving notice of the director's final decision, may file a petition with the superior court, under the provisions of Section 1094.5 of the Code of Civil Procedure, praying for a review of the entire proceedings in the matter, upon questions of law involved in the case. Such review, if granted, shall be the exclusive remedy available to the applicant or recipient or

On May 8, 2002, Haden filed a petition for writ of mandate in the Merced County Superior Court naming Health Services (rather than its director) as the respondent and MCHSA as the real party in interest. The proof of service indicates a copy of the petition was sent by certified mail to Health Services at the same address as Haden had used earlier for the hearing officer:

> California Department of Health Services
> Department of Social Services
> 744 P Street
> M.S. 28-04
> Sacramento, CA 95814

Consequently, notice of the mandamus petition meant for *Health Services* in Sacramento wound up instead at the regional office of *Social Services* in Fresno. And it never found its way thereafter to the intended recipient, at least according to the person authorized to accept service of such things for Health Services.

The hearing on the writ petition was held on June 10, 2002. Mr. Haden was there, as was someone representing MCHSA, but no one from Health Services. This absence was noted with some surprise, and frustration, by both the attorneys and the court. Mr. Haden, seeming to refer to Health Services and Social Services interchangeably, assured the court that service had been properly made. There was some additional, inconclusive discussion about whether he ought to have served the Attorney General's office as well.

In any event, MCHSA conceded that the position taken by Haden on behalf of Alvin and Twila Williams was correct, i.e., the funds in the special needs trust should not have been considered in determining their eligibility for Medi-Cal benefits. Accordingly, the hearing concluded as follows:

> county for review of the director's decision. *The director shall be the sole respondent in such proceedings*…." (Italics added.)

> "THE COURT: … [¶] So what I'm going to do, based on what I've heard, I'm going to grant the writ; order the matter be returned to trial court [*sic*, the Social Services hearing division] for further hearing and order that the Attorney General's Office -- the appropriate counsel [for Health Services] -- be properly notified by the defense [*sic*, the petitioner] of the Court's ruling. [¶] … [¶] And that will give them time to come in on a motion for reconsideration [if they did not receive notice of the hearing].
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> "MR. HADEN: Well, if [MCHSA] is right [that the trust funds should not have been considered] …, they [Health Services] don't have anything to talk about. But since I'll be making a motion for attorney's fees as to the Department of Health Services, I'm sure we'll hear from them sometime."

The court's formal order, filed on June 13th, vacated the hearing decision and directed Health Services to reinstate and process the Williams's Medi-Cal applications without regard to the special needs trust. It also provided that "Petitioners are awarded attorney fees and costs of suit from the Respondent, upon a proper motion therefor." (Notably, the order did not direct the clerk to issue the writ or to return the matter to Health Services for further action.)

On June 14th, Haden sent notice of the court's order by certified mail to Health Services at the same address as he had sent the writ petition, i.e., to the mail station of Social Services regional office in Fresno. He also sent a copy to the Attorney General's office.

On July 10th, for reasons left unexplained, Haden also effected *personal service* of the notice. According to the proof of service, the notice was served on a "Bill Marrifield" of the "California Department of Human Services" at *744 P Street* in Sacramento. In fact, Mr. Merrifield is a senior staff counsel for Health Services at *714 P Street*, and it was there that he accepted service of the notice, according to his subsequent declaration. Merrifield, in turn, passed the notice on to Tod Beach in the Medi-Cal litigation section of Health Services. Beach contacted Haden, who sent him a copy of the writ petition on July 16th. However, it appears Beach did not clarify for Haden the difference between

Health Services and Social Services (there is no Department of *Human* Services), or give him the correct addresses of these agencies.

On July 11th, Haden filed a motion in the superior court to recover the Williams's costs ($428) and attorney fees ($9,728) in the writ proceeding. Once again, he attempted to serve notice of the motion on Health Services by sending it via certified mail addressed to the Sacramento mail station for the Social Services regional office in Fresno. Health Services received word of the fee claim nonetheless, by some means or another, because on August 5, 2002, the Attorney General's office filed opposition to the claim on behalf of Health Services.

Health Services, in its opposition, purported to be making a special appearance for the limited purpose of contesting the court's jurisdiction to award costs and fees incurred by the Williams's in the mandamus proceeding, on the ground they had failed to give it proper notice of the proceeding, or in fact any notice at all. Health Services did not seek to set aside the order from the proceeding granting the writ, and indeed expressly agreed "to accept the decision of the court in the mandamus action." Thus, the Department said, "[This] opposition to the motion for attorney fees is not to be considered in any way an attack on that order."

Similarly, at a hearing on the fee claim held on September 12th, Health Services refused Haden's offer to enter into a stipulation setting aside the order granting the writ, and argued it should not be necessary to do that given its concession on the merits of the Williams's claims.

The court made no ruling with regard to this contention, and the discussion turned instead to whether or not Health Services had been effectively served with notice of the writ proceeding. The court ruled it had been.

> "THE COURT: All right. The court finds that whether or not the documents were, [for] want of a better word, mishandled, once they got to the facilities of 714-744 P Street [it] is not necessary that [a] particular mail stop routing [appear] on the documents. Once they were served and arrived

> at that facility[,] the burden becomes upon the State that's the recipient of [them] to assure [they are] properly hand-delivered and [the correct] people receive [them;] [the initial recipients] are able to interpret them and make a decision on whether or not it's an original filing as opposed to just copies. Whether or not it's something that they need have that, for whatever reason, would be sent to Fresno doesn't seem to carry the day. [¶] So the motion will be granted."[3]

Notably too, the Department's opposition to the Williams's claim for costs and attorney fees challenged not only the court's jurisdiction to make such an award, but also the *amount* of the costs and fees the Williams were claiming.[4] The court, without ruling

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[3] We understand the court to have meant that when notice of the writ petition arrived in the regional office of Social Services in Fresno, someone there in the hearing division should have realized that the notice was actually intended for the litigation department of Health Services in Sacramento, and rerouted the notice accordingly.

[4] Section 10962 of the Welfare and Institutions Code provides in part:

> "No filing fee shall be required for the filing of a petition pursuant to this section.… The applicant or recipient *shall be entitled* to reasonable attorney's fees and costs, if he obtains a decision in his favor." (Italics added.)

As Health Services noted in its opposition, the Williams's claim for costs and attorney fees included some costs and fees incurred for things unconnected to the mandamus proceeding, such as the administrative hearing and the special needs trust, and for things in the mandamus proceeding for which they should not have been charged, such as filing fees ($208).

Moreover, section 800 of the Government Code provides in part:

> "In any civil action to appeal or review the award, finding, or other determination of any administrative proceeding under this code or under any other provision of state law, … *where it is shown that the award, finding, or other determination of the proceeding was the result of arbitrary or capricious action or conduct by a public entity or an officer thereof in his or her official capacity*, the complainant if he or she prevails in the civil action may collect reasonable attorney's fees, computed at one hundred dollars ($100) per hour, but not to exceed seven thousand five hundred dollars ($7,500), where he or she is personally obligated to pay the fees,

on these latter objections, awarded the Williams the full amount of their claim, less their filing fees, for a total of $9,957.65.

DISCUSSION

The ultimate issue in this appeal, of course, is whether the Williams are entitled to recover from Health Services the costs and attorney fees they incurred in the mandamus action. However, the parties approach this issue from entirely different positions. Health Services argues, in effect, that the trial court was correct in treating the question as one of notice, but wrong in its conclusion that adequate notice was given. The Williams, on the other hand, contend essentially that the court was right in its conclusion they may recover costs and fees, but wrong about the issue. They maintain, as they did at the hearing, that lack of notice, while arguably a basis to set aside the order in the mandamus action, is not a basis to deny recovery of costs and fees incurred in the action. They reason that as long as there is a valid order in their favor on the merits, as there still is here, they are entitled by statute to their "reasonable attorney's fees and costs." (Welf. & Inst. Code, § 10962.) We agree with their position.

This being the case, it is not necessary for us to decide whether the Williams gave adequate notice to Health Services of the writ proceeding. The Department's remedy in that situation was to move to set aside the order granting the writ.

A valid judgment requires the court have jurisdiction of both the subject matter and the parties. (Code Civ. Proc., § 1917.) Personal jurisdiction, in turn, depends upon both due process -- reasonable notice and an opportunity to be heard -- and compliance with statutory jurisdictional requirements. (2 Witkin, Cal. Procedure (4th ed. 1996)

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from the public entity, in addition to any other relief granted or other costs awarded." (Italics added.)

The Williams's fee claim exceeded these limits, and did not allege that the administrative hearing decision in their case was the result of arbitrary or capricious conduct.

Jurisdiction, § 108, pp. 645-647.) A judgment against a party who was not properly served with notice of the proceeding, i.e., a party over whom the court lacked personal jurisdiction, is void. (*Id*. § 307 at pp. 878-879; *Ziller Electronics Lab GmbH v. Superior Court* (1988) 206 Cal.App.3d 1222, 1229-1230; see also *City of Los Angeles v. Morgan* (1951) 105 Cal.App.2d 726, 731 [party not served has no obligation to take any action to preserve his or her right to challenge the judgment].)

"A judgment or order of a court of general jurisdiction … is presumed to be valid, i.e., the court is presumed to have jurisdiction of the subject matter and the person, and to have acted within its jurisdiction. The judgment need not recite the jurisdictional facts, and a party relying on it need not plead or prove the jurisdictional facts. The burden of proof is on the party who attacks the judgment to show lack of jurisdiction." (8 Witkin, Cal. Procedure (4th ed. 1997) Attack on Judgment in Trial Court, § 5, p. 513.)[5]

If, despite a lack of personal jurisdiction, an action proceeds to judgment and the invalidity does not appear on its face, the judgment is subject to being set aside in either of two ways: by a motion pursuant to section 473.5 of the Code of Civil Procedure, or by

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5 Health Services cites two cases for the contrary proposition, stated this way: "'When a defendant challenges personal jurisdiction, the burden is on the plaintiff to demonstrate by a preponderance of the evidence that all necessary jurisdictional criteria are met.'" This statement is identified as a direct quote from *Arnesen v. Raymond Lee Organization, Inc*. (1973) 31 Cal.App.3d 991, 995. In fact, the quote appears nowhere on page 995 of that case. What appears instead is: "[W]here a defendant properly *moves to quash out of state service of process* for lack of jurisdiction, the burden of proof is upon the plaintiff to establish the facts of jurisdiction by a preponderance of the evidence [citations] …." (*Ibid*., italics added; see also, *Dill v. Berquist Construction Co*. (1994) 24 Cal.App.4th 1426, 1439-1440; 2 Witkin, Cal. Procedure, *supra*, Jurisdiction, § 211, pp. 775-776.) Thus, to be clear, the burden on a motion to quash a summons is different from the burden on a motion to set aside a judgment for lack of personal jurisdiction. Health Services did not file a motion to quash.

an independent action in equity. (8 Witkin, Cal. Procedure, *supra*, Attack on Judgment in Trial Court, § 203, pp. 708-709; *Sternbeck v. Buck* (1957) 148 Cal.App.2d 829.)

The twist in the present case is that Health Services concedes the order granting the writ petition was correct on the merits. Consequently, it would be a waste of time and money, Health Services asserts, to relitigate something that is not in dispute, and it should not be necessary to do that simply to challenge the court's jurisdiction to issue the order. Underlying these arguments, clearly, is the recognition that by moving to set aside the order, Health Services would be putting itself in the position of having eventually to pay the Williams's costs and attorney fees. It would not be fair, Health Services maintains, to require it to pay the opposing party's costs and fees incurred in a proceeding of which the Department had no notice. We agree so far.

On the other hand, the Williams argue it would not be fair to deny them recovery of their costs and fees incurred in a proceeding in which they were the prevailing party. We agree in principle with that argument as well.

These two positions are incompatible only insofar as they assume the costs and fees in question are those incurred in the original mandamus proceeding, i.e., $9,957.65. If Health Services moved successfully to set aside the court order granting the writ, and the merits of the Williams's claim were relitigated in their favor (or settled), it seems to us that the Williams would be entitled to recover only those costs and fees incurred in connection with this new proceeding -- an amount that probably would have been much less than the figure above.

Of course, the point is academic because Health Services did not move to set aside the order. But it serves to dispose of the parties' fairness claims, and refocus attention on what is really a fairly straightforward procedural issue. The Williams's right to costs and attorney fees derived from their having prevailed against Health Services on the merits in the mandamus action, and the order granting the writ petition provided for an award of costs and fees upon a motion only to determine the amount. Health Services was thereby

faced with a choice between complying with the order, or moving to set it aside for want of personal jurisdiction. The Department could not concede the merits of the Williams's claim but avoid its responsibility for their expenses.

Finally we observe that, although Health Services characterized its opposition to the Williams's fee request as a special appearance to contest jurisdiction, it also disputed the amount of the costs and fees the Williams were requesting. It was therefore in the nature of a general appearance, bringing the Department within the court's jurisdiction. (*Greener v. Workers' Comp. Appeals Bd*. (1993) 6 Cal.4th 1028, 1037; *Alioto Fish Co. v. Alioto* (1994) 27 Cal.App.4th 1669, 1689.) "'[W]here the defendant appears and asks some relief which can only be granted on the hypothesis that the court has jurisdiction of the cause and person, it is a submission to the jurisdiction of the court as completely as if he had been regularly served with process, whether such an appearance by its terms be limited to a special appearance or not.'" (*Security etc. Co. v. Boston etc. Co*. (1899) 126 Cal. 418, 422; see also 2 Witkin, Cal. Procedure, *supra*, Jurisdiction, § 199, pp. 764-766.) A general appearance by a party is equivalent to the personal service of summons on that party. (Code Civ. Proc., § 410.50.) Health Services was subject to the court's jurisdiction even without having moved to set aside the order in the mandamus proceeding.

DISPOSITION

The order awarding fees and costs is affirmed. The Williams are awarded costs and attorney fees. The case is remanded to the trial court to hear an application for such fees and to determine the amount.

_____, Buckley, Acting P.J.

WE CONCUR:

_____, Wiseman, J.

_____, Levy, J.